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UMNO Bahagian Pekan v Public Prosecutor

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HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO WA-44–185–07 OF 2019
MOHD NAZLAN J
27 SEPTEMBER 2019

C

Criminal Procedure — Criminal motion — Application to strike out action — Respondent filed forfeiture action against applicant pursuant to ss 56(1) and 61(2) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATFPUAA') — Applicant filed application to strike out forfeiture action pursuant to O 18 r 19(1)(b), (c) or (d), O 41 r 5(1) and (6) and O 92 r 4 of the Rules of Court 2012 and the inherent power of the court — Whether respondent's forfeiture action violated s 9(c) of the Societies Act 1966 ('the SA') — Whether forfeiture action was in the nature of criminal proceeding — Whether s 9(c) of the SA only applicable to civil actions — Whether s 9(c) of SA mandatory — Whether forfeiture action ought to be struck out due to non-compliance of s 9(c) of the SA — Whether affidavits affirmed by respondent's witness violated requirements of O 41 r 6 of the ROC against matters in affidavits which were scandalous, irrelevant or otherwise oppressive

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The respondent had filed a notice of motion pursuant to ss 56(1) and 61(2) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATFPUAA') against the applicant seeking for an order for the forfeiture of monies in the sum of RM700,000 and all the accrued interest thereon held in the applicant's CIMB current account which was alleged to have been obtained or related to the commission of an offence under s 4(1) of the AMLATFPUAA ('the forfeiture action'). In response, the applicant filed a notice of motion seeking to strike out the respondent's forfeiture action pursuant to O 18 r 19(1)(b), (1)(c) or (1)(d), O 41 r 5(1) and (6) and O 92 r 4 of the Rules of Court 2012 ('the ROC') and the inherent power of the court. The applicant submitted that: (a) the respondent's forfeiture action violated s 9(c) of the Societies Act 1966 ('the SA') which required that the public officer of the applicant society be named in the suit as the respondent; and (b) the affidavits affirmed by several individuals including one Tg Mohd Fazree bin Tengku Mohd Faizul ('TMF') ('the said affidavits') violated the requirements of O 41 r 6 of the ROC against matters in affidavits which were scandalous, irrelevant or otherwise oppressive, entitling the court to strike them out in consequence. In resisting the application, the respondent mainly submitted that s 9(c) of the SA was applicable only to civil actions and that the forfeiture action initiated by the respondent was in the nature of a criminal proceeding.

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Held, dismissing the application:

(1) The court disagreed with the respondent's contention that s 9(c) of the SA did not apply because s 9(c) concerned only civil proceedings and that s 56 of the AMLATFPUAA was criminal in nature. Nowhere was it stated in s 9(c) of the SA that its scope was confined to civil proceedings only. The language admitted of its applicability to all forms of proceedings, civil and criminal, more so in the Bahasa Malaysia version of s 9(c) of the SA which stated 'mendakwa atau didakwa' for 'sue or be sued'. In addition, even if s 9 of the SA applied only to civil proceedings (which was untrue), the respondent was wrong in stating that the forfeiture action under s 56 was a criminal action. Sections 56 and 61 of the AMLATFPUAA did not state that they were in the nature of a criminal proceeding. Further, there was high authority that s 56 of the AMLATFPUAA was in the nature of a civil proceeding. Based on the above findings, the court agreed with the applicant that the respondent's forfeiture action failed to adhere to the requirements of s 9(c) of the SA (see paras 18–19, 22, 25, 28 & 31).

(2) The requirement under s 9(c) of the SA was mandatory but the non-compliance of the same did not justify the striking out of the entire forfeiture action. Firstly, based on the circumstances of the case, the case was not obviously unsustainable. Secondly, it was not in the interest of justice for the forfeiture action be struck out and dismissed at this initial stage and there was no real prejudice or miscarriage of justice occasioned to the applicant by reason of the non-compliance with s 9(c) of the SA since there was reasonable clarity and certainty of the subject matter of the monies sought to be forfeited and of the bank account concerned. Thirdly, the forfeiture action should not be struck out because the notice of motion could be corrected. Based on the above findings, the court gave the public prosecutor as the applicant in the underlying forfeiture action one week to file in an amended notice of motion of the said forfeiture action which adhered to s 9(c) of the SA, failing which the forfeiture action would be struck out (see paras 49, 54, 57, 59–60 & 64).

(3) Even though a society was as an unincorporated association devoid of a legal personality, an argument could be made that on the totality of the provisions of the SA, the status of a registered society like the applicant, in law was akin to that of a separate legal entity. Which would further fortify the contention that whilst there was non-compliance with s 9(c) of the SA, it was clear to all and sundry that the applicant was correctly identified (see para 65).

(4) In essence, the rules in the ROC should apply in respect of affidavits. Considering the nature of the complaints mounted by the applicant against the said affidavits, O 1A and O 2 of the ROC could be invoked to save whatever irregularities raised by the applicant. The respondent had

provided a reasonable explanation to the complaints raised by the applicant. Further, the applicant's contention that the respondent exhibited the wrong registration number for the applicant society was plainly erroneous based on the fact that the number had been changed and updated in a new electronic registration system since the year 2012. It could not therefore be stated that the applicant had demonstrated that the said affidavits contained matters which were scandalous, irrelevant or otherwise oppressive, in violation of O 41 r 6 of the ROC entitling the court to reject them, and strike out the forfeiture action in consequence (see paras 76–79).

[Bahasa Malaysia summary

Responden telah memfailkan notis usul menurut ss 56(1) dan 61(2) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 ('AMLATFPUAA') terhadap pemohon bagi memohon perintah untuk perampasan wang berjumlah RM700,000 dan semua faedah terakru yang terdapat dalam akaun semasa CIMB pemohon yang didakwa telah diperoleh atau berkaitan dengan pelanggaran kesalahan di bawah s 4(1) AMLATFPUAA ('tindakan perampasan'). Sebagai tindak balas, pemohon memfailkan notis usul untuk membatalkan tindakan perampasan responden menurut A 18 k 19(1)(b), (1)(c) atau (1)(d), A 41 k 5(1) dan (6) dan A 92 k 4 Kaedah-kaedah Mahkamah 2012 ('KKM') dan kuasa inheren mahkamah. Pemohon berhujah bahawa: (a) tindakan perampasan responden melanggar s 9(c) Akta Pertubuhan 1966 ('AP') yang menghendaki pegawai awam pemohon dinamakan dalam saman sebagai responden; dan (b) afidavit yang diikrarkan oleh beberapa individu termasuk seorang Tg Mohd Fazree bin Tengku Mohd Faizul ('TMF') ('afidavit-afidavit tersebut') melanggar syarat A 41 k 6 KKM yang melarang perkara-perkara dalam afidavit yang menimbulkan skandal, tidak relevan atau menindas, yang mengakibatkan mahkamah berhak untuk membatalkannya. Dalam menentang permohonan tersebut, hujah utama responden adalah bahawa s 9(c) AP hanya terpakai untuk tindakan sivil dan tindakan perampasan yang dimulakan oleh responden adalah bersifat prosiding jenayah.

Diputuskan, menolak permohonan:

(1) Mahkamah tidak bersetuju dengan pendapat responden bahawa s 9(c) AP tidak terpakai kerana s 9(c) hanya berkaitan dengan tindakan sivil dan bahawa s 56 AMLATFPUAA adalah bersifat jenayah. Tidak dinyatakan dalam s 9(c) AP bahawa ruang lingkupnya hanya terbatas pada tindakan sivil sahaja. Bahasa yang digunakan di dalam peruntukan tersebut mengakui bahawa ia terpakai untuk semua bentuk prosiding, sivil dan jenayah, lebih-lebih lagi dalam versi Bahasa Malaysia s 9(c) AP yang menyatakan 'mendakwa atau didakwa' untuk 'sue or be sued'. Di samping itu, andai kata s 9 AP hanya terpakai untuk prosiding sivil sahaja

(yang mana ianya tidak benar), responden adalah salah apabila menyatakan bahawa tindakan perampasan di bawah s 56 adalah tindakan jenayah. Seksyen 56 dan 61 AMLATFPUAA tidak menyatakan bahawa kedua-dua peruntukan ini bersifat prosiding jenayah. Tambahan lagi, terdapat banyak rujukan kes daripada mahkamah atasan bahawa s 56 AMLATFPUAA adalah bersifat prosiding sivil. Berdasarkan dapatan-dapatan di atas, mahkamah bersetuju dengan pemohon bahawa tindakan perampasan responden gagal mematuhi syarat-syarat s 9(c) AP (lihat perenggan 18–19, 22, 25, 28 & 31).

(2) Syarat-syarat di bawah s 9(c) AP adalah mandatori tetapi ketidakpatuhan kepada peruntukan tersebut tidak mewajarkan pembatalan keseluruhan tindakan perampasan. Pertama, berdasarkan keadaan kes, kes ini bukannya secara jelas tidak dapat dilaksanakan. Kedua, akan berlaku kegagalan keadilan jika tindakan perampasan dibatalkan dan ditolak pada tahap awal ini dan tidak ada prejudis yang sebenarnya atau kegagalan keadilan terjadi kepada pemohon disebabkan oleh ketidakpatuhan dengan s 9(c) AP kerana terdapat kejelasan dan kepastian yang wajar mengenai perkara pokok wang yang ingin dirampas dan akaun bank yang berkenaan. Ketiga, tindakan perampasan tidak boleh dibatalkan kerana notis usul boleh diperbetulkan. Berdasarkan dapatan-dapatan di atas, mahkamah memberi pendakwa raya sebagai pemohon dalam tindakan perampasan satu minggu untuk memfailkan notis usul tindakan perampasan yang dipinda yang sesuai dengan s 9(c) AP, jika gagal tindakan perampasan akan dibatalkan (lihat perenggan 49, 54, 57, 59–60 & 64).

(3) Walaupun sebuah pertubuhan adalah persatuan yang tidak diperbadankan yang tidak mempunyai entiti undang-undang, suatu hujahan dapat dibuat bahawa pada keseluruhan peruntukan AP, status sebuah pertubuhan berdaftar seperti pemohon, dalam undang-undang adalah serupa dengan entiti undang-undang yang berasingan. Hujahan ini akan lebih memperkuatkan lagi pertikaian bahawa walaupun terdapat ketidakpatuhan dengan s 9(c) AP, adalah jelas bagi semua pihak bahawa pemohon telah dikenal pasti dengan betul (lihat perenggan 65).

(4) Pada hakikatnya, kaedah-kaedah dalam KKM harus terpakai terhadap afidavit. Berdasarkan sifat aduan-aduan yang dikemukakan oleh pemohon terhadap afidavit-afidavit tersebut, A 1A dan A 2 KKM boleh digunapakai untuk menyelamatkan segala ketidakaturan yang dinyatakan oleh pemohon. Responden telah memberikan penjelasan yang munasabah terhadap aduan-aduan yang dikemukakan oleh pemohon. Selanjutnya, hujahan pemohon bahawa responden mengemukakan nombor pendaftaran yang salah untuk pertubuhan pemohon jelas suatu kekhilafan berdasarkan fakta bahawa nombor tersebut telah diubah dan diperbaharui dalam sistem pendaftaran

elektronik baru sejak tahun 2012. Oleh itu, tidak dapat dikatakan bahawa pemohon telah menunjukkan bahawa afidavit-afidavit tersebut mengandungi perkara-perkara yang menimbulkan skandal, tidak relevan atau menindas, melanggar A 41 k 6 KKM yang memberi hak kepada mahkamah untuk menolaknya, dan seterusnya membatalkan tindakan perampasan tersebut (lihat perenggan 76–79).]

Cases referred to

Affin Bank Bhd v Eye Bee Sdn Bhd [2005] 7 MLJ 1, HC (refd)
Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)
Chen Cheng & Anor v Central Christian Church and another appeal [1996] 1 SLR 313, CA (refd)
K&L Family Sdn Bhd v Persatuan Lung Yen Manjung Perak [2019] 1 LNS 648, HC (refd)
Kuala Lumpur Finance Bhd v KGV & Associates Sdn Bhd [1995]1 MLJ 504, HC (refd)
Malayan Banking Berhad v Chairman Sarawak Housing Developers' Association [2014] MLJU 598; [2014] 6 CLJ 409, FC (folld)
Metroplex Holdings Sdn Bhd v Commerce International Merchant Bankers Bhd [2013] 4 MLJ 520, CA (refd)
PP v Awalluddin bin Sham Bokhari [2018] 2 MLJ 401; [2018] 1 CLJ 305, FC (refd)
PP v Kuala Dimensi Sdn Bhd & Ors [2018] MLJU 791; [2019] 3 CLJ 650, CA (refd)
Ramachandran a/l Meyappan & Ors (suing on behalf of themselves and 40 others who are the devotees of Sri Maha Mariamman Temple, Seafield) v Chellapan a/l K Kalimuthu (sued as a public officer on behalf of the management body of Sri Maha Mariamman Temple, Seafield under s 9(c) of the Societies Act 1966) & Ors [2019] 12 MLJ 488, HC (refd)
Shahidan Bin Shafie v Atlan Holdings Bhd and anor [2005] MLJU 279; [2005] 2 CLJ 793, CA (refd)
S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204, FC (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 4(1), 56, 56(1), (4), 61, 61(2)
Rules of Court 2012 O 1A, O 2, O 2 r 1, O 15 r 12, O 18 r 19(1), (1)(b), (1)(c), (1)(d), O 32 r 13(2), (2)(b), O 41, O 41 rr 5(1), (6), 6, O 92 r 4
Societies Act [SG] s 35(b)
Societies Act 1966 s 9, 9(a), (e)

M Reza Hassan (Amalin Mohd Zahid and Ezuain Farhana Ahmad with him) (Raja Riza & Assoc) for the plaintiff.

Allan Suman Pillai (Maziah Mohaide with him) (Deputy Public Prosecutor, Malaysian Anti-Corruption Commission) for the defendant.

Mohd Nazlan J:

INTRODUCTION

[1] This is an application filed by the applicant to strike out the respondent's notice of motion dated 19 June 2019 and all the related affidavits filed by the respondent in the Kuala Lumpur High Court Criminal Application No WA-44–128–06 of 2019 involving a forfeiture action instituted against the applicant pursuant to ss 56(1) and 61(2) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATFPUAA').

[2] At the conclusion of the hearing, I dismissed the application, and highlighted the primary reasons for the same. This judgment sets out the full reasons for the dismissal.

KEY BACKGROUND FACTS

[3] On 19 June 2019, the respondent filed a notice of motion at the Kuala Lumpur High Court pursuant to ss 56(1) and 61(2) of the AMLATFPUAA against the applicant ('the forfeiture action'). The respondent's forfeiture action was registered as Criminal Application No WA-44–128–06 of 2019. Essentially, the respondent's forfeiture action sought for an order for the forfeiture of monies in the sum of RM700,000 and all the accrued interest thereon held in the applicant's CIMB current account No 800533xxxx which was alleged to have been obtained or related to the commission of an offence under s 4(1) of the AMLATFPUAA.

[4] At the hearing of the respondent's forfeiture action on 12 July 2019, the respondent sought for an order of the court for the issuance of a third party notice and publication of the same in the *gazette* pursuant to s 61(2) of the AMLATFPUAA. This was met with the objection from the applicant which then informed the court of its intention to file a motion to strike out the respondent's forfeiture action.

[5] On 22 July 2019, the applicant thus filed a notice of motion seeking to strike out the respondent's forfeiture action pursuant to O 18 r 19(1)(b), (1)(c) or (1)(d), O 41 r 5(1) and (6) and O 92 r 4 of the Rules of Court 2012 and the inherent power of the court. The applicant's striking out application was registered as Criminal Application No WA-44–62–04 of 2019.

[6] Hence the instant application before me.

THE PRIMARY CONTENTIONS OF THE APPLICANT

[7] The application filed by the applicant may be said to be grounded on two principal arguments. The first is that the forfeiture application by the public prosecutor violates s 9(c) of the Societies Act 1966 which requires that the public officer of the applicant society be named in the suit as the respondent.

[8] The second concerns his complaints about the affidavits affirmed by Allan Suman Pillai, a DPP at MACC, dated 18 June 2019, by Nur Aida binti Arifin, Penguasa Kanan, MACC dated 18 June 2019, and by Tg Mohd Fazree bin Tengku Mohd Faizul ('TMF') Penolong Penguasa MACC, also dated 18 June 2019 ('the said affidavits'). The said affidavits have been filed in support of the forfeiture action instituted by the respondent under ss 56(1) and 61(2) of the AMLATFPUAA.

[9] The basis of the complaint is the said affidavits violate the requirements of O 41 r 6 of the Rules of Court 2012 ('the RC 2012') against matters in affidavits which are scandalous, irrelevant or otherwise oppressive, entitling this court to strike them out in consequence.

[10] This the applicant argues arose from the affidavit which was affirmed by TMF which disclosed that the investigation was incomplete, as reflected in inconsistent averments in that same affidavit. These included errors in relation to the dates of cheque issuance and the closure date of the corresponding account, as well as some cheque details which could not be reconciled with the specific accounts identified by the respondent.

[11] The same affidavit was also argued by the applicant to be defective because it contains matters which could not be proven by the deponent from his own personal knowledge as required by O 41 r 5(1) of the RC 2012. This rule states that an affidavit may contain only facts as the deponent is able of his knowledge to prove. As an example the applicant pointed out that the affidavit by TMF did not exhibit any document to support its averment about the balance amount in the relevant accounts.

[12] The applicant also contends that the exhibit annexed to the affidavit of TMF on the confirmation of the society registration number of the applicant society contains details which are plainly different from those shown in the affidavit filed on behalf of the applicant which also produced the *Sijil Kebenaran* issued by the Registrar of Societies ('ROS').

[13] In addition, the applicant asked that this court not to admit the reply affidavit to oppose the instant striking out application as affirmed by TAF on 15 August 2019 because it failed to adhere to O 32 r 13(2) of the RC 2012, which stipulates the 14 day time period to reply to an affidavit, as follows:

> 32 Applications and proceedings in chambers
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> 13 Service or use of affidavit (O 32 r 13)
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> (1) Any party —
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> (a) filing an affidavit intended to be used by him in any proceedings in Chambers; or
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> (b) intending to use in any such proceedings any affidavit filed by him in previous proceedings, shall serve the affidavit on every other party or give notice of his intention to do so in Form 58, as the case may be.
>
> (2) Save as otherwise provided in these Rules, or unless otherwise directed by the Court —
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> (a) an affidavit intended to be used in support of an application shall be filed and served on the other party within fourteen days from the date of filing of the application;
>
> (b) *a party intending to reply to an affidavit intended to be used in support of an application shall file his affidavit and serve it on the other party within fourteen days from the date the sealed application and the affidavit in support of that application were served on him whichever is later;*
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> (c) *a party intending to reply to an affidavit served on him shall file his affidavit and serve it on the other party within fourteen days from the date the affidavit he intends to reply was served on him; and*
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> (d) *if an affidavit or an exhibit is deposed or affirmed by a deponent out of Malaysia, then the time fixed by this rule for a party to file and serve a reply to an affidavit shall be twenty-one days.* (Emphasis added.)

ESSENCE OF THE ARGUMENTS OF THE RESPONDENT

[14] The crux of the resistance of the respondent against this striking out application by the applicant is the key contention that s 9(c) of the Societies Act 1966 is applicable only to civil actions and that the forfeiture action initiated by the respondent is in the nature of a criminal proceeding.

[15] The respondent further argued that there was no issue with its forfeiture action as it has accurately specified the identity of the account holder of the bank account (namely UMNO Bahagian Pekan) from where the monies is proposed to be forfeited by the respondent in the underlying action under s 56 of the AMLATFPUAA. And that this identity of the account holder (the applicant) for the subject account No 800533xxxx is confirmed by the records of the relevant financial institution, namely CIMB Bank.

[16] In addition, in relation to the complaints directed at the said affidavits filed by the respondent, it is sought to be explained by the respondent in a reply affidavit affirmed by TMF dated 15 August 2019 that first, the mistake in the specification of the type of the accounts vis a vis the cheques issued is merely clerical in nature; secondly, there was initially no supporting document such as the updated statement of account for the said account given that the assertion was based on the investigation undertaken by the investigating officer which was on-going but which statement of account from CIMB Bank was in any event subsequently furnished in the instant affidavit affirmed by TMF on behalf of the respondent dated 15 August 2019; and thirdly, the alleged error in the registration number of the applicant was baseless as the applicant had referred to the old registration number whilst the cause papers filed by the respondent reflected the present registration number of the applicant society.

EVALUATION AND FINDINGS OF THIS COURT

Applicability of s 9 of the Societies Act 1966

[17] The overarching issue in this striking out application is principally the argument on the applicability of s 9(c) of the Societies Act 1966.

[18] The respondent, I repeat, states that s 9(c) does not apply because s 9(c) concerns only civil proceedings and that s 56 of the AMLATFPUAA is criminal in nature.

[19] I will have to disagree with this assertion. The concerns are twofold, for not only did the respondent not provide any authority for its stance that s 9 of the Societies Act 1966 applies only to civil proceedings but the respondent did also not proffer any substantiation for the assertion that s 56 of the AMLATFPUAA is in the nature of a criminal proceeding.

[20] The law in my view is quite plainly the reverse.

[21] It is apposite that focus be had on s 9(c) of the Societies Act 1966 which pertinent parts read as follows:

> The following provisions shall apply to registered societies —
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> ...
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> (c) a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society;
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> ...

[22] Nowhere is it stated in s 9(c) that its scope is confined to civil proceedings only. The language admits of its applicability to all forms of proceedings, civil and criminal, more so in the BM version of s 9(c) which has 'mendakwa atau didakwa' for 'sue or be sued'.

[23] And there is no conceivable let alone compelling reason why there ought to be a distinction that limits its remit such that the requirement to name the public officer or office bearers of the society is relevant only to civil actions. It may probably even be argued that if a distinction could ever be justified it would have been more appropriate for the requirement to be made applicable to criminal proceedings that provide greater protection to the party being accused of a crime, than in the area of civil litigation.

[24] The objection of the respondent on this ground is therefore flawed.

Section 56 forfeiture action is a civil proceeding

[25] There is in any event also no basis for the respondent to argue that the forfeiture action under s 56 of the AMLATFPUAA is a criminal proceeding. Thus, even if s 9 of the Societies Act 1966 applies only to civil proceedings (which is untrue), neither is the respondent correct in stating that the forfeiture action under s 56 is a criminal action.

[26] Section 56 of AMLATFPUAA reads as follows:

> 56 Forfeiture of property where there is no prosecution
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> (1) Subject to section 61, where in respect of any property seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is —
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> (a) the subject-matter or evidence relating to the commission of such offence;
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> (b) terrorist property;
>
> (c) the proceeds of an unlawful activity; or
>
> (d) the instrumentalities of an offence.
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> (2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied —
>
> (a) that the property is —
>
> (i) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(ii) terrorist property;

(iii) the proceeds of an unlawful activity; or

(iv) the instrumentalities of an offence; and

(b) that there is no purchaser in good faith for valuable consideration in respect of the property.

(3) Any property that has been seized and in respect of which no application is made under subsection (1) shall, at the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized.

(4) In determining whether the property is —

(a) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or

(d) the instrumentalities of an offence,

the court shall apply the standard of proof required in civil proceedings.

[27] And for completeness, s 61 of the AMLATFPUAA should also be stated, as follows:

61 Bona fide third parties

(1) The provisions in this Part shall apply without prejudice to the rights of bona fide third parties.

(2) The court making the order of forfeiture under subsection 28L(1) or section 55 or the judge to whom an application is made under subsection 28L(2) or 56(1) shall cause to be published a notice in the *Gazette* calling upon any third party who claims to have any interest in the property to attend before the court on the date specified in the notice to show cause as to why the property shall not be forfeited.

(3) A third party's lack of good faith may be inferred, by the court or an enforcement agency, from the objective circumstances of the case.

(4) The court or enforcement agency shall return the property to the claimant when it is satisfied that —

(a) the claimant has a legitimate legal interest in the property;

(b) no participation, collusion or involvement with respect to the offence under subsection 4(1) or Part IVA or a terrorism financing offence which is the object of the proceedings can be imputed to the claimant;

(c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;

(d) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property; and

(e) the claimant did all that could reasonably be expected to prevent the illegal use of the property.

[28] Similarly, the above provisions do not state that they are in the nature of a criminal proceeding. No single word gives that suggestion either. And crucially I cannot but agree with the contention of the applicant that there is high authority that s 56 of the AMLATFPUAA is in the nature of a civil proceeding.

[29] In the Federal Court decision in the case of *Public Prosecutor v Awalluddin bin Sham Bokhari* [2018] 2 MLJ 401; [2018] 1 CLJ 305 which concerned s 56, it was observed thus:

> [31] In an application for an order of forfeiture of property under s 56(1) where there is no prosecution, the standard of proof to determine whether the property has been obtained as a result of or in connection with an offence under s 4(1) is the standard of proof required in civil proceedings: See s 56(4) of the Act. Any question of fact to be decided by the court in proceedings under the Act shall be decided on the balance of probabilities: See s 70(1) of the Act.

[30] Whilst the standard of proof in civil proceeding for forfeiture action under s 56 of the AMLATFPUAA is actually stated in the above-mentioned s 56(4) of the same Act, in an even more recent pronouncement on the subject, this time by the Court of Appeal in *Public Prosecutor v Kuala Dimensi Sdn Bhd & Ors* [2018] MLJU 791; [2019] 3 CLJ 650 which considered the rules governing affidavits in s 56 proceedings, the following passages would be most instructive:

> [135] Further, the forfeiture proceeding under s 56 is a civil forfeiture proceeding as stated in s 56(4) and 70(1) of the AMLATFA where the standard of proof is on a balance of probabilities. We do not see any prejudice arising as a result of the usage of affidavit evidence because all parties are given the opportunity to rebut any allegations made and also to disclose whatever evidence necessary in support of their necessary contentions.
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> [136] In perusing the AMLATFA, it does not disclose in what manner affidavit evidence is to be governed and used in a s 56 application. The CPC is also silent on this except the fact that affidavit evidence may be used as per s 424 of the CPC.
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> [137] This being the case, reference would have to be made to O 41 of the Rules of Court 2012 [PU(A) 205/2012] (ROC 2012). Although this law governs civil proceedings, it is applicable in a forfeiture application such as this. This is especially so as forfeiture proceeding under s 56 is a civil forfeiture proceeding.

[138] Accordingly, we are of the view that any affidavit intending to be used in a s 56 application must comply in terms of form and substance with O 41 of the ROC 2012.

[31] Given these authorities, it is as clear as day that the premise of the respondent that the forfeiture action is a criminal proceeding which does not fall within the scope of s 9(c) of the Societies Act 1966 is misconceived. I cannot therefore disagree with the applicant that the forfeiture proceeding failed to adhere to the requirements of s 9(c) of the Societies Act 1966.

Section 9(c) is mandatory

[32] It should be mentioned that the High Court in *Ramachandran a/l Meyappan & Ors (suing on behalf of themselves and 40 others who are the devotees of Sri Maha Mariamman Temple, Seafield) v Chellapan a/l K Kalimuthu (sued as a public officer on behalf of the management body of Sri Maha Mariamman Temple, Seafield under s 9(c) of the Societies Act 1966) & Ors* [2019] 12 MLJ 488 held that the requirement to specify the office bearers under s 9(c) is mandatory.

[33] In that case a member of a registered society's attempt to bring an action on behalf of the society was ruled to have been defective in the absence of a legal standing for his failure to comply with s 9(c). The High Court reasoned the ruling in the following terms:

J. Do plaintiffs have locus standi to file this suit?

[34] When a plaintiff has no right to file a suit, the suit can be struck out under Paragraph (b) (the action is frivolous and/or vexatious), paragraph (d), O 92 r 4 RC and the court's inherent jurisdiction (the suit is an abuse of Court process) — please see *Kapten Lam Chee Keong & Ors v Malaysian Airline System Bhd* [2015] 4 CLJ 1089, at paras 30, 31 and 35.

[35] The management body is registered as a 'society' under s 7(1) of the Societies Act 1966 (SA). Section 2 SA has given a wide definition of 'society' to include 'any club, company, partnership, or association of seven or more persons whatever its nature or object, whether temporary or permanent'.

[36] Section 9(c) SA provides as follows:

9. Provisions applicable to registered societies

The following provisions shall apply to registered societies —

...

(c) *a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose*, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the

name of any office-bearer of the society; ... (Emphasis added.)

[37] The filing of this suit by the plaintiffs did not comply with s 9(c) SA. I am of the view that s 9(c) SA is a mandatory provision because the legislature has employed the use of the mandatory term 'shall' in the opening sentence of s 9 SA. If s 9(c) SA is not mandatory, this will open the floodgates of litigation to any member of any registered society to sue on behalf of the registered society on any matter regarding the registered society. Such an interpretation is also contrary to good governance on the part of registered societies, namely any action to be filed by a registered society should be instituted in the name of the public officer declared to the ROS and is registered with the ROS for the purpose regarding suits under s 9(c) SA (presumably after the registered society's office-bearers have duly considered such a proposed suit). As this suit has breached s 9(c) SA, on this ground, the 3 applications should be allowed with costs.

[34] Note however that in that case the failure was on the part of the plaintiff society but the analysis should be applicable to a registered society in either status.

[35] Despite the non-compliance however, the question that arises is whether this necessarily renders the forfeiture action defective and not competent.

Non-compliance need not be fatal; can be corrected

[36] I would give the answer in the negative and not go so far as to agree with the argument of the applicant that the non-compliance in consequence justifies a striking out of the entirety of the s 56 forfeiture action.

[37] Learned counsel for the applicant relied on the former Federal Court decision in *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204, in particular to the following passage:

Before proceeding to consider the four issues raised we should perhaps make some observations on two matters which have neither been raised nor considered at any stage of these proceedings hitherto. First, the Association as such has no standing and is incompetent to sue as a plaintiff. It is a body registered under the Societies Act and s 9(c) thereof specifically provides that a society may sue in the name of its registered public officer. If there is no member registered as such, but we have not been told that that is so, then we would think that if it was at all necessary for the Association to sue jointly as a plaintiff a representative claim by one or more of its office-bearers on behalf of all the members would be the solution. In any event the competent person to sue in this matter is the first appellant as the surviving trustee in whom the land is vested.

[38] Although not responded to by the respondent, I think at least four points can be made to question the applicant's reliance on this case. First, as is plain from the passage, the issue of the standing of the society was not even raised for arguments in that case.

[39] Secondly, the issue in that case concerned a suit instituted by the association, unlike in the instant case. It will be seen that s 9(c) does not expressly address the situation where the association which has not registered a public officer is the party which institutes the proceeding (see further below).

[40] Thirdly, and related to the immediately preceding point, even in that case the Federal Court stated that initiation of a suit by way of a representative action would also be acceptable. Again I stress that in the instant case before me, the registered society is named as the respondent. Fourthly, that case was not referred to in other authorities which had subsequently dealt with s 9(c) of the Societies Act 1966, at least not in any of the cases included in the bundles of authorities prepared by the parties before me.

[41] As such in my view reliance by the applicant on *S Kulasingham* does not progress the case of the applicant.

[42] The Federal Court in the case of *Malayan Banking Berhad v Chairman Sarawak Housing Developers' Association* [2014] MLJU 598; [2014] 6 CLJ 409 had to consider whether the respondent was correct in suing the appellant in his capacity as the chairman of a society for recovering proceeds of fraudulent cheques from the respondent. The appellant bank argued that the only person entitled to commence proceedings for and on behalf of the association was its public officers and if none was registered, the suit must be pursued in the personal name of its office bearers as required under s 9(c) of the Societies Act 1966. The High Court decided in favour of the respondent and the said decision was affirmed by the Court of Appeal.

[43] The issue that arose for the Federal Court's determination was whether the respondent (chairman of the association) was right in suing the appellant bank under his capacity as the chairman rather than his individual name, as no public officer was declared and registered by the Registrar of Societies.

[44] The main issue was that even though the language of the second part of s 9(c) deals with the situation where no public officer is registered with the ROS in the context where the society is being sued, it does not state the position where the society is the party suing in the similar absence of any registered public officer.

[45] In dismissing the appeal, Suriyadi FCJ for the Federal Court

instructively clarified the position in the following passages:

> [28] The action here was not commenced in the name of the Association hence not breaching any rule of the inability of an Association to sue in its name. As no public officer was declared and registered, the respondent had initiated a representative action as permitted by O 15 r 12 the RHC 1980 (O 15 r 12 Rules of the Court 2012). On this point see also the case of *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204; [1982] CLJ 65; [1982] CLJ Rep 314, where Eusoffe Abdoolcader, J (as he then was), speaking for the court had opined that a society may sue in the name of its public officer but in the absence of a registered public officer, a representative claimed by one or more of its office bearers on behalf of the society would suffice. Alluding to the above speech we find that the format of the respondent's action falls safely within it.
>
> [29] Generally speaking, the issue before us, which is a point of practice and procedure and no stranger to courts, and have been consistently affirmed by courts that an intitulement that is wrong at the outset or there is uncertainty as to the type of suit, entitles the court to strike it out (see *Abdul Rahim Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417; [1995] 4 CLJ 551; *Score Option Sdn Bhd & Anor v. Duar Tuan Kiat & Ors* [2013] 5 MLJ 716; [2012] 1 LNS 812; *Cheow Chew Khoon v. Abdul Johari Abdul Rahman* [1995] 1 MLJ 457; [1995] 4 CLJ 127). However the strict interpretation of the procedural landscape saw a shift with the promulgation of the previous O 2 r 1 of the RHC 1980 and was reaffirmed in the Rules of Court 2012, whereupon any omission or mistake is to be regarded as an irregularity, rectifiable so long as it can be undertaken without causing injustice. The distinction between mere irregularities and nullities now ceased to exist. The relevant provision of O 2 r 1 of the Rules of Court 2012 reads as follows:
>
> > 1 (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any steps taken in the proceedings, or any document, judgment or order therein.
>
> [30] Under O 1A of the Rules of Court 2012 the court or judge now shall have regard to the justice of the particular case and not only to the technical non-compliance of the any of the rules.
>
> [31] In the current appeal, the respondent and his representative capacity, were easily identifiable despite the scrutiny of the intitulement being cursory. In a nutshell no error or uncertainty could be detected on the face of the record let alone no injustice would occur if any rectification exercise is undertaken (see *Harkness v. Bell's Asbestos & Engineering Ltd* [1992] 2 MLJ 146; [1967] 2 QB 729; *Sunkyong International Inc v Malaysian Rubber Dvpt Corp Bhd* [1992] 3 CLJ 1531; [1992] 1 CLJ Rep 310). With a litany of cases available in current publications pertaining to O 2 r 1 no more legal activism is required on this matter.
>
> [32] The O 15 r 12 as to representative proceedings, designed to avoid multiplicity of proceedings, should be a flexible tool of convenience in the administration of

justice and not to be applied in a rigorous sense. In the circumstances of the case, with the Chairman being an office-bearer under art 3(3) of the Association's constitution, empowered to bring the action and redress the wrong suffered by the members, the action is justifiable. Here all the members represented by the Chairman have a common interest and grievance, invaded by an enemy, with the relief claimed in its nature being beneficial to all (see *Smith v Cardiff Corporation* [1954] 1 QB 210; *Duke of Bedford v Ellis* [1901] AC 1). As opined by the Court of Appeal in *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff Shah Mohd & Ors & Other Appeals* [1997] 2 CLJ 607, inevitably down the line it would be the members who will become the ultimate victim in any loss suffered by a club (or society, as in this case). Unless redressed promptly the losses suffered here will be beyond recovery and ultimately borne by members of the Association and the respondent personally.

[33] In light of all the above factors the respondent's action cannot be said to be on the face of it null and void. Evidentially by alluding to his capacity as the chairman it was reasonable to infer that this was a representative action. Taking the argument a step further had he used his personal name, it could be inferred that the action was a personal one.

[34] Having perused the question posed we do not intend to supply a simple yes or no answer but instead state that the Sarawak Housing Developers' Association cannot sue under the Association's name. This is founded on trite law. By adding the word 'Chairman' as a prefix to the Association does not make this an action initiated by the Association per se. The respondent on the other hand may sue as Chairman, Sarawak Housing Developers' Association on a representative capacity even though not a public officer, without the need to allude to his personal name as suggested by the appellant. This is a cut and dry case carried out by an office-bearer who holds an office recognised by the Association's constitution on behalf of the members. We thus uphold the findings of the High Court and the Court of Appeal and therefore dismiss the appeal with costs.

[46] One key observation from this Federal Court authority that may be made for the purposes of the case now before me is that even though the status of the chairman of the association as the plaintiff was not literally specified in the scope of s 9(c), the Federal Court ruled that the action was nevertheless valid by way of a representative proceeding under O 15 r 12 of the RC 2012.

[47] Significantly O 1A and O 2 r 1 of the RC 2012 on the interest of justice were also invoked by the Federal Court to further fortify the ruling as the shortcoming did not in the circumstances of that case render the proceeding to be a nullity.

[48] In the case before me the society in question, a political party, was made the respondent in the forfeiture action. It is not the party instituting the action as the applicant, which in this case is the public prosecutor. Pursuant to s 9(c), the suit by the applicant must name the society's public officer as registered

with the ROS. If none is registered, any one of its office bearers must be named instead. The public prosecutor, or the applicant in the main forfeiture action did neither.

[49] However for all practical purposes, the society and its branch have been correctly identified and there is no confusion as to whose property is now sought to be forfeited by the public prosecutor. But there is still non-compliance with s 9(c) of the Societies Act 1966. I agree the requirement is mandatory but I do not think such a failure justifies the striking out of the entire forfeiture action. I say so for a number of reasons.

[50] First, the applicant in the striking out premises its application on O 18 r 19(1) of the RC 2012 which reads as follows:

> 19 Striking out pleadings and endorsements (O 18 r 19)
>
> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[51] The applicant in the application relies on limbs (b), (c) and (d). Thus it is argued that the forfeiture action commenced by the respondent, the public prosecutor was frivolous, vexatious, prejudices the action and otherwise tantamount to an abuse of court process.

[52] The leading authority on O 18 r 19(1) is the Supreme Court decision in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36, and in particular, the following part of the judgment of Mohamed Dzaiddin SCJ (later Chief Justice):

> The principles upon which the Court acts in exercising its power under any of the four limbs of O 18 r 19(1) Rules of the High Court are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck v Wilkinson* [1899] 1 QB 86, p 91), and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (*Attorney-General of Duchy of Lancaster v L & NW Ry Co* [1892] 3 Ch 274, CA). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (*Wenlock v Moloney* [1965] 1 WLR

1238; [1965] 2 All ER 871, CA.). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in parimateria with our O 33 r 2 Rules of the High Court) (*Hubbuck v Wilkinson*). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[53] It is therefore well established that the power of the court to strike out under the four grounds of O 18 r 19(1) is to be exercised when it can clearly be determined that a claim or answer is prime facie obviously unsustainable (see also the Court of Appeal decision of *Metroplex Holdings Sdn Bhd v Commerce International Merchant Bankers Bhd* [2013] 4 MLJ 520). It is also only to be invoked sparingly (see *Affin Bank Bhd v Eye Bee Sdn Bhd* [2005] 7 MLJ 1).

[54] I do not think in the circumstances of the case as discussed earlier, it can be said that the forfeiture action is obviously unsustainable by reason only of the non-adherence to s 9(c) such that the case ought to be struck out without this court hearing the merits of the action.

[55] Secondly, I would follow the approach taken by the Federal Court in the case of *Malayan Banking Berhad v Chairman Sarawak Housing Developers' Association* referred to earlier where regard was had to O 2 r 1 and O 1A of the RC 2012. These two often relied on rules provide as follows:

1A Court or judge shall have regard to justice

Regard shall be to justice (O 1A)

In administering these Rules, the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.

2 Effect of non-compliance

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been non-compliance with the requirement of these Rules, the non-compliance shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) These Rules are a procedural code and subject to the overriding objective of enabling the Court to deal with cases justly. The parties are required to assist the Court to achieve this overriding objective.

(3) The Court or Judge may, on the ground that there has been such non-compliance as referred to in paragraph (1), and on such terms as to costs or otherwise as it or he thinks just, bearing in mind the overriding objective of these Rules, exercise its or his discretion under these Rules to allow such amendments, if

A any, to be made and to make such order, if any, dealing with the proceedings generally as it or he thinks fit in order to cure the irregularity.

B **[56]** I am not unmindful of the fact that these rules speak of non-compliance with the RC 2012 whereas the infringement in the instant case is in relation to s 9(c) of the Societies Act 1966. However, it is no less pertinent to appreciate that the basis of the application for the striking out is O 18 r 19 of the RC 2012.

C **[57]** It is therefore incumbent upon this court to also ensure that in the administration and application of O 18 r 19, regard must be had to considerations on the overriding interest of justice. In my view it is not in the interest of justice for the forfeiture action be struck out and dismissed at this initial stage.

D **[58]** I should add that in *K&L Family Sdn Bhd v Persatuan Lung Yen Manjung Perak* [2019] 1 LNS 648 where there was also a failure to name the public officer of the judgment debtor society, the High Court held that there was no ambiguity on the cause of action and subject matter of the property in the execution proceedings and that there was no prejudice caused to the judgment debtor in the judgment creditor not stating the public officer or office bearer of the judgment debtor society in the title to the statement of claim. Furthermore, the judgment creditor did not raise this objection in any of the earlier proceedings and was thus deemed to have waived its right to do so.

F **[59]** In the instant case before me, it cannot be said that there was real prejudice or miscarriage of justice occasioned to the applicant by reason of the non-compliance with s 9(c) of the Societies Act 1966 since there is reasonable clarity and certainty of the subject matter of the monies sought to be forfeited and of the bank account concerned.

G **[60]** Thirdly, the forfeiture action should not in my view be struck out because the notice of motion could be corrected. And it should be corrected precisely because, as I have stated earlier, the requirement in s 9(c) is mandatory.

H **[61]** Importantly, at the same time, a court which is asked to strike out a pleading or action (like what the applicant is applying for presently in relation to the forfeiture action) has a separate and independent jurisdiction to direct an amendment to save the pleading instead of have it struck out.

I **[62]** It is a general principle of law that a court should not act summarily if an amendment can be ordered to be made to regularise the defect (see the High Court decision in *Kuala Lumpur Finance Bhd v KGV & Associates Sdn Bhd* [1995]1 MLJ 504).

[63] A more authoritative pronouncement of this principle was expressed by the Court of Appeal in the case of *Shahidan Bin Shafie v Atlan Holdings Bhd and anor* [2005] MLJU 279; [2005] 2 CLJ 793 where a succinct analysis of the case-laws on the issue, local as well as English cases can be readily appreciated from the following passages from the judgment of Gopal Sri Ram JCA (as he then was):

> With that I consider the second issue. This has to do with the power of a court when an application is made to it under RHC O 18 r 19. It is best that I remind myself about what that rule of court says:
>
> ...
>
> You will see from the opening words of the rule that the court has the power, on an application to strike out a pleading or order it to be amended. This is an important choice that the court has. It does not therefore mean that in every case where an application is made by a party to an action to strike out his opponent's pleading it is obligatory for the court to make an order striking out the pleading in question. The court has a discretion to exercise on the facts of each case whether the particular pleading ought to be struck out as disclosing no cause of action or ordered to be amended. It is only when the court is satisfied that no amendment could possibly save it ought a pleading to be struck out. At least three cases illustrate the width of the power which a court has in this regard.
>
> First, in *Kuala Lumpur Finance Bhd v Kgv & Associates Sdn Bhd* [1995] 1 MLJ 504; [1995] 1 CLJ 519, Shaik Daud J (later JCA) refused an application to strike out a statement of claim on the ground that it could be saved by an amendment. He said:
>
> > It is also settled law that the mere fact that the case is weak and unlikely to succeed is no ground for the striking out and also where the pleadings can be amended, leave under the rule to amend will almost always be given. In other words if there are defects in the pleadings resulting in the other party applying to strike out, and if an amendment can correct the defect, the courts generally would not act summarily.
>
> The second case is *Lim Weow @ Lim Neu v Perwira Habib Bank Malaysia Berhad* [2001] 2 AMR 1307 where Rahmah Hussain J followed *Kuala Lumpur Finance Bhd v Kgv & Associates Sdn Bhd* . Lastly, there is *Muniandy s/o Subrayan & Ors v The Chairman & Board Members of Koperasi Menara Maju Bhd* [1997] 1 MLJ 557; [1997] 1 CLJ 417, which is a decision of this court. In that case, the High Court had struck out a statement of claim on the ground that certain statutory compliance had not been pleaded by the plaintiff. On appeal Shankar JCA said this:
>
> > With all due respect to the trial judge, if he thought that it was imperative that the statement of claim should plead compliance, (notwithstanding that the fact of compliance was already on record by way of an agreed document), *he should have directed that the claim be amended*. Striking out pleadings under O 18 r 19 of the Rules of High Court 1980 is a discretionary power to be exercised according to the justice of the case. (Emphasis added.)
>
> ...

I think that I should also mention the older case of *Semenanjong Trading Co v Teoh Cheng Hock* [1963] MLJ 89; [1963] 1 LNS 119 ...

As may be seen, the plaintiff there was given time to put his pleaded case in order. *Semenanjong Trading Co v Teoh Cheng Hock* merely illustrates the settled practice of the court not to strike out a pleading that can be saved by amendment. I may add that the Malaysian High Court Practice 2001, para 18.19.2 states that the power to amend conferred by O 18 r 19 is in addition to the power to amend available under O 20. The editors cite *Semenanjong Trading Co v Teoh Cheng Hock* as authority for this proposition. After careful reflection, I think that the proposition is correct. In my judgment, the power to direct an amendment vested in the court by O 18 r 19 is a separate and distinct power conferred by O 20 to permit an amendment on application by a litigant in that behalf.

There are several examples cited in the English Supreme Court Practice 1991 to illustrate the settled practice of the court not to strike out a pleading unless no amendment can save it. Take the case of *Republic of Peru v Peruvian Guano Company* [1887] 36 Ch D 489. There you find Chitty J, the acknowledged master of practice and procedure saying this:

> Then comes the question whether the action should be dismissed. The notice of motion does not ask in terms for the dismissal of the action, but it does ask for such other order as may be proper, and there seem to me to be two reasons why I should dismiss the action. First, *the pleader has made the best of his case, I am satisfied that he could not state it better than he has stated it.* Then the Plaintiffs are still deliberately retaining the money. It is a very different thing to offer to bring the money into account and keeping this large sum, as I have said, in their treasury, or, having spent it for the purpose of the Republic, and refunding it or bringing it into Court. There is no offer even now made as I understand it.

It seems to me that the authorities that I have discussed in brief thus far show that a court ought not to strike out an originating process or pleading unless it cannot be saved by any amendment whatsoever based on the available facts. That, of course, is another way of saying that it is only in a plain and obvious case that a pleading will be struck out as not disclosing any cause of action. *Because, a pleading that may be saved by amendment is not a plain and obvious case that should be struck out.* (Emphasis added.)

[64] Given the circumstances and facts of the case where the registered society and the subject property have been accurately identified without any practical ambiguity, confusion or substantial prejudice; but is however not properly specified for the purpose of legal proceedings under s 9(c) of the Societies Act 1966, in my judgment, the correct judicial response on the part of this court, having considered the relevant case laws authorities is for the public prosecutor as the applicant in the underlying forfeiture action to be given one week to file in an amended notice of motion of the said forfeiture action which adheres to s 9(c), failing which the forfeiture action will be struck out.

Its legal status

[65] Further, even though a society is as an unincorporated association devoid of a legal personality, an argument could be made that on the totality of the provisions of the Societies Act 1966 the status of a registered society like the applicant, in law is akin to that of a separate legal entity. Which in my view would further fortify the contention that whilst there is non-compliance with s 9(c), it is clear to all and sundry that the applicant was correctly identified (though not accurately specified as a party to the legal proceeding).

[66] A case of relevance in this regard would be the decision of the Court of Appeal in the Singapore case of *Chen Cheng & Anor v Central Christian Church and another appeal* [1996] 1 SLR 313. The respondent church was an unincorporated association registered under the Singapore Societies Act (Cap 311). The said Act contains provisions similar to, for present purposes, our s 9(a) and (e) of the Malaysian Societies Act 1966.

[67] In that case the appellant was sued by the respondent for defamation. The appellant contended before the senior assistant registrar that the respondent had no locus to sue in its own name as it was a society, ie an unincorporated association. The application to strike out was dismissed and the respondent's action was allowed to proceed to trial.

[68] In essence, it was ruled by the Court of Appeal that based on the construction of the statute, the totality of the provisions of the Act, an unincorporated association which is registered as a society under the Act has sufficient legal personality with a status of a 'near corporation' or 'quasi corporation', and may thus sue or be sued in the name of the society.

[69] In its analysis the Court of Appeal made reference to various provisions of the Societies Act (Cap 311) before it came to the conclusion as aforesaid. These included the equivalent to our ss 9(a) and (e). They are as follows:

> Section 9 of the Malaysia's Societies Act 1966
>
> The following provisions shall apply to registered societies —
>
> (a) the movable property of a society, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of the society, and in all proceedings civil and criminal, may be described as the property of the governing body of the society by its proper title if known;
>
> ...
>
> (e) (i) no judgment in any such suit against a registered society shall be put into force against the person or property of the person sued but against the property of the society;

Section 35 of the Singapore's Societies Act

The following provisions shall apply to registered societies —

(a) the movable property of a society, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of the society, and in all proceedings civil and criminal, may be described as the property of the governing body of the society by their proper title;

...

(d) except as otherwise provided in section 6, no judgment in any suit against a registered society shall be put into force against the person or property of any officer or member of the society but only against the property of the society;

[70] I should add that the Singapore Societies Act has a more direct to the point — provision on the ability of a society to sue and be sued. Its s 35(b) plainly says thus:

(b) every such society may sue or be sued in the name in which it was registered under this Act.

[71] Of course the Malaysian version in s 9(c) is different, but the analysis in that Singapore Court of Appeal decision of its Societies Act is unmistakable in pointing out that the relevant provisions provide among others for the property of the society to be held by its trustees or governing body and thus considered as a separate fund from the assets of the members.

[72] I may add although not specified in that case it is no less clear that in terms of a judgment obtained against the society, both statutes state that any such judgment should be enforced against the property of the society, and not the property of the person being sued on behalf of the society, much less of its members.

[73] Regardless of the difference, the point is really this. The totality of the provisions of the Act, as construed by the Singapore Court of Appeal in that case led to the conclusion that the Act has created sufficient legal personality for a registered society enabling it to sue and be sued. The court said, for clarity, in the following paragraphs, as follows:

[36] From all of the above it is clear to us that an unincorporated association registered under the Societies Act as a 'society' is very much like a registered trade union under the English Trade Union Acts of 1871 and 1876. The 'society' has a registered name and address which it may change, albeit only with the consent of the Registrar. It has objects which it may pursue and it may set up branches. Section 35(a) specifically provides that it may hold moveable property through its trustees or governing body and although there is no specific provision regarding the holding of immovable property, we have no doubt that it can do so through trustees. Such

property are considered to be a separate fund from the assets of the members, as can be seen from ss 19, 25 and 35. Sections 10, 12 and 36 envisage that the society may act through its agents and officers.

[37] Last but not least by virtue of s 35(b) a society may sue or be sued in its registered name and by reason of s 35(d) where a judgment is obtained against a society, the judgment may only be put into force against the property of the society and not those of its officers or members. Furthermore by reason of s 36, a society commencing an action in its registered name can be ordered to furnish security for the costs of the defendant and only where the amount of the security is shown to be insufficient to pay the defendant's costs will the officers of the society who approved the institution of the action be held jointly and severally liable for the defendant's costs in excess of the amount of the security.

[38] It is clear to us from the totality of the provisions of the Societies Act that an unincorporated association registered as a 'society' under the Societies Act has sufficient legal personality such that in effect the provisions of the Societies Act have created a 'near-corporation' or a 'quasi-corporation' ...

The members may change, but the registered society retains its permanent identity. Whether it is called a 'near-corporation' or a 'quasi-corporation' or having a 'collective identity' distinct from its members for the time being or any other thing does not detract from the intention of Parliament to be gathered from the whole of the Societies Act which is to give an unincorporated association registered under the Societies Act as a 'society' a legal persona.

[39] It was contended before us that s 34(b) of the Societies Act was purely a procedural provision. That may well be so. In fact F A Chua J in *Workers' Party v Tay Boon Too* ([27] supra) though it was. But the question of whether a registered society can sue for defamation in its registered name is not decided by s 34(b) alone but by the combined effect of all the provisions of the Societies Act.

[40] For the foregoing reasons we confirm the learned judge's decision that the respondents, as a registered society under the Societies Act, have the necessary legal personality to sue for defamation in their registered name.

[74] Given the above it can certainly be said that whilst non-compliance there indeed was, the totality of the provisions of our Societies Act 1966 which are not unlike the Singapore's Societies Act, means that the status of the applicant like the other societies registered under the Act has arguably been elevated to one akin to a quasi-corporation like entity, and definitely beyond merely being an unincorporated association without any juridical presence. This further fortifies the argument that the specification of the applicant society as the respondent in the forfeiture action whilst non-compliant, cannot justifiably warrant a striking out of the main action.

The contentions against the affidavits of the respondent

[75] For completeness, I should also address, albeit briefly, the objections the applicant has in relation to the said affidavits, including particularly those affirmed by TMF as mentioned earlier. It is useful in this regard to refer again to the decision of the Court of Appeal in *Public Prosecutor v Kuala Dimensi Sdn Bhd & Ors* [2018] MLJU 791; [2019] 3 CLJ 650 which considered the rules governing affidavits in a s 56 proceedings, where, as reproduced above, it was ruled that the affidavit used in s 56 forfeiture action must comply in form and substance with O 41 of the RC 2012.

[76] In essence and substance, the rules in the RC 2012 should apply in respect of affidavits. Again considering the nature of the complaints mounted by the applicant against the said affidavits concerning the main action as well as the affidavit in reply to the instant strike out application, in my view the same O 1A and O 2 of the RC 2012 could be justifiably invoked to save whatever irregularities raised by the applicant.

[77] The respondent in my view has provided a reasonable explanation to the complaints raised by the applicant. Thus, the mistake in the type of the account vis a vis the cheque is merely clerical in nature. Further, because investigation was in progress at the relevant stage, no supporting document in respect of the pertinent bank account was earlier exhibited even though the pertinent averments were made on the basis of the findings of the investigation by the investigating officer. What more the fact that the statement of account has since been subsequently provided in an affidavit by TMF dated 15 August 2019.

[78] And the averment by the applicant that the respondent exhibited the wrong registration number for the applicant society was plainly erroneous. The applicant itself was mistaken about its own registration number, and appeared not to know that the number had been changed and updated in a new electronic registration system since the year 2012.

[79] It cannot therefore be stated that the applicant has demonstrated that the said affidavits contained matters which are scandalous, irrelevant or otherwise oppressive, in violation of O 41 r 6 of the RC 2012 entitling this court to reject them, and strike out the forfeiture action in consequence.

[80] Fundamentally the objections by the applicant against the said affidavits were raised even before the applicant affirmed any affidavits in reply to the said affidavits on the main forfeiture action.

[81] At the same time, the late reply affidavit by TMF dated 15 August 2019 in respect of the instant strike out application which went beyond the 14 day reply period as stipulated under O 32 r 13(2)(b) of the RC 2012 also did not in my view in this case prejudice the applicant which was able to further respond to the said affidavit by TMF.

[82] Considering the circumstances of this application and the underlying action the rejection of the said affidavit would not further the cause of justice.

CONCLUSIONS

[83] It bears repetition and is worthy of emphasis that all these arguments strongly suggest that a striking out of the main forfeiture action on the ground of purported concerns with the non-compliance with s 9(c) of the Societies Act 1966 and the affidavits filed on behalf of the respondent — both in the main action as well as in the instant application — would not accord with the interest of justice. It would not be a proper and judicious exercise of its discretion if this court were to strike out the action for these reasons posited by the applicant without a hearing on the merits.

[84] In view of the foregoing analysis, it is my judgment that the applicant has not succeeded in establishing its case to have the forfeiture action struck out under O 18 r 19 of the RC 2012 for the reasons it has advanced. The action should be heard on its merits and not be summarily dismissed at this very early stage. The application to strike out the forfeiture action is therefore dismissed.

[85] Nevertheless, I have imposed the condition, for the reasons I have earlier explained, that the amended notice of motion on the forfeiture action under s 56 of AMLATFPUAA which adheres to s 9(c) of the Societies Act 1966 should be filed in court within seven days, failing which the main action would have to be struck out.

Application dismissed.

Reported by Dzulqarnain Ab Fatar